

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.H., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
CLEMENT J. ZABLOCKI VA MEDICAL  
CENTER, Milwaukee, WI, Employer**

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**Docket No. 21-1398  
Issued: April 11, 2022**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 23, 2021 appellant filed a timely appeal from a June 3, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted April 8, 2021 employment incident.

## **FACTUAL HISTORY**

On April 19, 2021 appellant, then a 44-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 2021 she broke her right ring and little fingers while in the performance of duty. She indicated that she slipped and fell and tried to grab a door with her right hand, and the door “slammed on her hand.” On the reverse side of the claim form, B.G., an assistant nurse manager, acknowledged that appellant was in the performance of duty when the incident occurred and that her knowledge of the facts about the injury was in agreement with appellant’s statements. Appellant stopped work on April 9, 2021.

Dr. Anna Tyszkowska, a Board-certified internist, noted in an April 8, 2021 emergency room medical report, that appellant was seen for severe pain in the right fourth and fifth digits, which she attributed to slamming her fingers in a door at work. On physical examination, she noted that appellant was unable to bend her fingers due to pain and observed a superficial laceration at the palmar aspect of the fifth digit of her right hand. Thereafter Dr. Thomas Rudek, a Board-certified emergency medicine specialist, in a report of even date, indicated that he reviewed the x-rays of appellant’s right hand and performed a physical examination, noting a small wound at the proximal fifth phalanx. He applied a splint to the right fifth digit.

A report of x-rays of the right hand, dated April 8, 2021, revealed a faint lucency/area of mild contour irregularity at the proximal aspect of the distal phalanx of the fifth digit, which was possibly consistent with a subtle nondisplaced acute fracture, and a contour deformity of the fifth metacarpal, which was likely chronic.

In an employing establishment report of emergency treatment also dated April 8, 2021, an unknown medical provider released appellant to return to work with no use of the right hand, effective April 9, 2021.

In an April 29, 2021 development letter, OWCP advised appellant of the deficiencies of her claim and requested that she provide a narrative medical report from a treating physician, containing a medical diagnosis and explaining how the employment incident caused, contributed to, or aggravated her diagnosed medical condition. It afforded her 30 days to respond.

In an April 30, 2021 letter, Meghan A. Furlow, a physician assistant, released appellant to return to full-time, left hand only work as of May 3, 2021.

In a May 12, 2021 letter of controversion on behalf of the employing establishment, an employing establishment registered nurse and workers’ compensation specialist, reviewed appellant’s history of injury and recommended denial of her claim due to inconsistencies, a lack of a medical diagnosis, and the x-ray finding of a likely chronic contour deformity of the fifth metacarpal.

By decision dated June 3, 2021, OWCP accepted that the April 8, 2021 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of

record was insufficient to establish a medical condition causally related to the accepted employment incident. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>9</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS

The Board finds that appellant has met her burden of proof to establish a superficial laceration at the palmar aspect of the fifth digit of the right hand causally related to the accepted April 8, 2021 employment incident.

OWCP found that the April 8, 2021 employment incident had occurred in the performance of duty, as alleged. In the April 8, 2021 emergency room notes, Drs. Tyszkowska and Rudek both observed a superficial laceration at the palmar aspect of the fifth digit of the right hand. As the evidence of record establishes that appellant's employment incident resulted in a visible injury, the Board therefore finds that appellant has met her burden of proof to establish a superficial laceration at the palmar aspect of the fifth digit of the right hand.<sup>10</sup> The case shall be remanded for payment of medical expenses and wage-loss compensation for any attendant disability.

The Board further finds, however, that appellant has not met her burden of proof to establish any additional medical conditions in connection with the accepted April 8, 2021 employment injury.

The employing establishment report of emergency treatment of even date and the April 30, 2021 letter by Ms. Furlow did not contain a diagnosis. The Board has held that a medical report lacking a firm diagnosis is of no probative value.<sup>11</sup> Therefore, this evidence is insufficient to establish appellant's claim.

Appellant submitted a report of x-rays of the right hand, dated April 8, 2021, which noted a "possible" acute fracture of the distal phalanx of the fifth digit and a "likely chronic" contour deformity of the fifth metacarpal. The Board has also held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.<sup>12</sup> Consequently, this evidence is insufficient to establish appellant's claim.

The Board therefore finds that appellant has submitted insufficient medical evidence to establish an additional medical condition causally related to the accepted April 8, 2021 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). See also *P.B.*, Docket No. 20-1643 (issued March 30, 2022); *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

<sup>11</sup> *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>12</sup> *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish superficial laceration at the palmar aspect of the fifth digit of the right hand causally related to the accepted April 8, 2021 employment incident. The Board further finds, however, that she has not met her burden of proof to establish an additional medical condition in connection with the accepted April 8, 2021 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 3, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 11, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board